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On Thursday, April 24, 2014 11:34 AM, Ernesto Gonzales <[E.Gonzales@jemezcoop.org](mailto:E.Gonzales@jemezcoop.org)> wrote:  
Chuck and John: Attached is the letter from Kathleen O'Dea. David brought in a hard copy.  
Ernesto

——Original Message——

From: Jenna Jaquez [<mailto:jjaquez@jemezcoop.org>]  
Sent: Thursday, April 24, 2014 11:25 AM  
To: Ernesto Gonzales  
Subject: Message from "RNP002673672B8B"

This E-mail was sent from "RNP002673672B8B" (Aficio MP C4502).

Scan Date: 04.24.2014 11:25:03 (-0600)

**CONFIDENTIAL DRAFT FOR MR. DAVID SALAZAR ONLY**

December 12, 2013

Board of Trustees  
Jemez Mountains Electric Cooperative, Inc.  
P.O. Box 128  
Espanola, New Mexico 87115

**RE: Notice of Breach of Contract and Other Claims**

Dear Trustees,

On December 10, 2013 I received an email, with an attached letter that stated that my contract for legal services would not be renewed. The letter stated that the notice was within the 60 days required by the contract. Although the letter was dated November 21, 2013 it was mailed to the general post office box at the New Mexico Regulation and Licensing Department and I never received it. A check was also mailed to the Regulation and Licensing Department, constituting payment for legal services for the months of August and September, which to date I also have not received. Accordingly, the 60-day notice requirement was not met.

Further, and more significantly, the action taken by the Board does not ~~comply with the requirements of the contract and~~ notice is hereby provided that the action constitutes the actual breach of contract and of the anticipatory repudiation of my current contract. Furthermore, ~~certain incidents by a Trustee have taken place since August 20, 2013 that have caused damage to me and given rise to additional legal claims against the Cooperative.~~

I have enjoyed providing legal services to the Cooperative during the last four years, I have a genuine and abiding respect for the Board as a whole and the organization and I am grateful for having the opportunity to gain an understanding and knowledge of the Espanola Valley. I wish to part in the most amicable way possible. ~~However, the conduct of this Trustee has been inappropriate, unacceptable and harmful to me, both financially and to my reputation.~~ Accordingly, in an effort to reach a true compromise and settlement of this matter out of respect for you and the organization I wish to inform the Board of the specific nature of my claims and provide an opportunity to settle without the need for litigation:

**ANTICIPATORY REPUDIATION**

Although my contract with the Cooperative expires on January 31, 2014, the addendum to the contract entitles me to a full review by the Legal/Admin Committee prior to a decision by the Board to either to renew or decline to renew the contract. When this contract was negotiated and executed in 2012, the Board required that I receive future performance evaluations prior to renewal and made the Performance Evaluation For Legal Services a part of the contract. The document sets forth 29 duties and areas of responsibility. Several are discretionary on the part of the Board but most are mandatory. I have attached the document to this letter for your review.

The fact that the Board has made a decision to ~~decline to renew without fulfilling the terms of the agreement and performing the evaluation contained in the document~~ constitutes an anticipatory breach of contract and entitles me to compensatory damages.

#### **ACTUAL BREACH OF CONTRACT**

In addition to the anticipatory breach for the failure to conduct the required performance evaluation, my contract with the Cooperative together with the document and Board Policy, sets forth my obligations and duties to the Cooperative.

The document was designed to establish and define 29 areas of responsibility at the Cooperative so that general corporate counsel would be held responsible for the legal well being of the Cooperative in the defined areas, to provide the board with feedback to use in setting my new hourly rate and to provide me with information regarding my strengths and weaknesses. In part, this document was created in order to remove from a single individual (Mr. Sowell) the authority to decide when and whether to involve corporate counsel so that the board would have checks and balances through the attorney and performance of these responsibilities would occur as a matter of course, just as any employee with a defined set of responsibilities.

Since the second week of October I have been removed from or prevented from performing these duties in my contract by a Trustee. Removing me from the duties required by my contract and for the benefit of the organization as a whole has caused me financial damage and has left the Cooperative without appropriate legal representation.

The Cooperative is in breach of the following contractual obligations by preventing me from providing legal services designated by my job description in the following areas among others:

- Adequately reviews legal documentation such as minutes, notices, etc., and provides necessary input and oversight

- Does appropriate study and research on new information such as policy, contracts, resolutions, etc., before presentation to the Board and provides appropriate guidance with regard to legal ramifications.
- Takes due action to prevent unnecessary legal actions affecting the Cooperative and develops appropriate strategies to ensure the Cooperative is as favorably positioned as possible *in all legal matters*.
- Reviews and renders legal opinions on current and potential legal ramifications inherent in the Cooperative's present bylaws, policies and actions.
- Reviews recurring contractual relationships to render advice on need for change in wording to avoid current or future legal problems and provides legal advice on reports and statements required by regulatory agents.
- Previews *all new contracts* requiring Board of Trustee action before they are entered into by the Cooperative.
- *Advises the Board monthly* on all pending legal actions and involvement.
- Attends NRECA Annual and Regional Meetings

Accordingly, preventing me from engaging in activities required by my contract is a breach and entitles me to compensatory damages. Simply cutting my work and refusing to pay is not an option under the existing agreement.

#### HOSTILE ENVIRONMENT, SEXUAL HARASSMENT, AND RETALIATION

In addition to the Cooperative's breach of contract, I have been subject to multiple incidents of hostility, intimidation and threats by a Board Trustee. The incidents began on August 20, 2013 when this Trustee stated to me that he would be sure that I did not make more money than him and that he would be sure that he made more money than me. These statements were made multiple times when I spoke with him on the telephone. He further stated that lawyers were unnecessary and overpaid. He also stated that he needed to be paid more than me because he was smarter and more worthwhile and that he was a man. He told me I had better have tough skin because he was going to be purposefully tough on me. He would further characterize me as a taxi-cab with the meter running and tried to encourage me to reduce the quality of my work, to limit the scope of my projects causing the real possibility of error and provide services for free. On September 6, 2013 this Trustee engaged in sexual harassment by gesturing in a sexually explicit manner pretending to masturbate during a telephone conference with the forensic auditor in the board conference room of the Cooperative. On September 8, 2013 (a Sunday morning), this Trustee telephoned me while I was having breakfast with my family to tell me that whether I would continue to work for the Cooperative would depend upon him because he would be able to persuade a majority of the Board to dismiss me, should he decide he did not like me. That was the only topic of conversation. It is clear now that his assessment of the situation was correct. Nonetheless, his

aggressive and intimidating approach has caused me a great deal of anxiety and fear. This Trustee has also made the same threats of dismissal, to the General Manager and other staff over and over again in my presence and similar statements about the competency of his fellow board members. If allowed to remain unchecked, this conduct will lead to multiple claims causing incalculable harm to the Cooperative. So long as a Trustee is permitted to intimidate in this manner, the Cooperative will not be able to attract and keep competent help.

During the following weeks, this same Trustee tried to discredit my skills and reputation by disseminating emails that "informed" me as to the correct sized paper to file at the PRC, implying that I lacked the most simple skills and knowledge for the job and sent emails criticizing my competency without the courtesy of addressing his concerns directly to me. In addition, this Trustee gave numerous incorrect and improper directives as to the specific manner in which I was to perform legal work. Had I followed the directives, the Cooperative would have been at risk for further claims and I would have fallen below my required standard of care for legal work. The fact that I declined to follow his instructions led to further slights and commentary on my reputation and the quality of my work and became retaliation against me. No one should be attacked for doing the right thing.

#### **TORTIOUS INTERFERENCE WITH CONTRACT AND TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP**

Since mid-October I have been prevented from providing legal services to the cooperative. I have been removed from all board meetings, document reviews, contract reviews, preparation of notices and minutes, review of litigation documents, review and advice on legal action and potential legal action. I have been removed from all emails pertaining to administrative actions, legal document review and court matters. I have been prevented from using my independent legal judgment to take action on matters that I believe are legally necessary, advisable and appropriate and are required by my contract. The actions by the Trustee have not only interfered with and prevented my ability to fulfill my legal obligations under the contract, but this Trustee has prevented the organization as a whole from receiving the specified and defined legal services that have been deemed necessary for the last 39 years and has left the senior management of the cooperative without sufficient legal advice to properly perform their jobs in a complex environment of law, statute, regulation and policy and at a time when the Cooperative faces numerous legal problems. This is a clear violation of a Trustees fiduciary duty and a formula for disaster. The previous General Manager, Mr. Sowell, attempted to limit the involvement of general corporate counsel and control legal matters himself. That approach, which is being repeated again by this board member to a much greater extent, led to the Cooperative's current financial instability and has negatively impacted the members.

Not only is each incident committed by this Trustee against me actionable as discrimination, hostile environment and retaliation in a court of law, each incident is

also tortious interference with my contract and my business relationship with the Cooperative. You, as Board members, are fully aware that I have all the necessary elements to make out a claim:

- *A valid business relationship or business expectancy existed between the parties*
- *The defendant had knowledge of the relationship or expectancy*
- *The defendant intentionally convinced one of the parties to terminate the business relationship, breach a contract, or withhold a valid business expectancy*
- *The defendant's interference resulted in damages to the plaintiff*

These incidents have been documented and the damages can be measured.

#### **DAMAGE TO REPUTATION AND DEFAMATION**

Each of you know the statements, both written and verbal, made by this Trustee about me and others and each of you know that the statements would tend to be harmful to the reputation. All I need to show is:

- That the words used are the kind that would tend to harm reputation
- Whether the words actually caused harm is not controlling.
- To be defamatory, it is not necessary that the communication actually cause harm to another's reputation or deter third persons from associating or dealing with him. Its character depends upon its general tendency to have such an effect
- the doctrine permits recovery when no injury to reputation has occurred.
- General damages may be awarded to a plaintiff if his reputation has been injured. In such case, the plaintiff is allowed to recover compensation without any proof beyond the defamatory nature of the statement(s). This compensation covers the emotional trauma and harm suffered by the plaintiff.
- **Special damages, such as lost profits, that resulted from defamation such as attacks on the plaintiff's competence to perform adequately in his profession are deemed so horrible that they are "slanderous per se," requiring no additional proof of special damages.**

#### **FUTURE HARM**

On November 21, 2013, I prepared a 9 page letter to the Chairman, at the request of another Trustee who shall remain anonymous, reporting that this Trustee, who is the subject of this letter, had engaged in multiple violations of the bylaws, policy, contract and law against the senior management team of the cooperative and certain board members. One of these violations involved an apparent defamatory and slanderous statement made by this Trustee to the press about a member of the Cooperative's senior management. I provided documentation of these incidents to the Chairman, made recommendations to avoid or minimize the risk to the cooperative and asked that he keep the letter confidential, fearing retaliation and reprisals. Having observed this Trustee engage regularly in slanderous statements, I am fearful of future and further damage to my reputation if he continues to target me.



As a result of my observations, I am unwilling to amicably part company with the cooperative without compensation for my damage and the written assurance that this Trustee will not continue to criticize, ridicule or slander me so that he cannot continue to diminish my reputation and credibility. I feel compelled to file a lawsuit and seek a restraining order unless an agreement can be reached.

It is obvious to me that I need an exit plan for myself that is going to protect my reputation and future as well as compensate me for the tortious treatment I have endured from this Trustee. I have sought legal consultation for the purpose of identifying my claims and damages. Before I retain this attorney to proceed, I would like to offer a meeting to discuss my claim before the board (without the presence of this one Trustee) to attempt to settle this in the most amicable way that protects both the organization and myself in the future.

When you consider whether to discuss settlement with me you should be aware that due to the intentional nature of the Trustee's conduct, it is unlikely that your D&O insurance policy will provide the Cooperative with a defense or your costs to defend this case. The damages may be substantial, and to the extent that you participated or were aware of his conduct and did not stop it you, too, may be individually liable.

Furthermore, because the conduct that gives rise to the claims were initiated and caused by a single individual, he now has a conflict of interest in any settlement discussion and should be recused from comment or participation in this matter. He cannot act in the best interests of the board or organization in resolving these claims because he was the cause. Accordingly, it is to everyone's advantage to come to a mutually agreeable and reasonable accommodation which I am more than willing to do.

Please let me know whether you are willing to meet to discuss these matters by the close of business \_\_\_\_\_.

Sincerely,

Kathleen O'Dea

Xc: David Salazar, Johnny Jaramillo, Nick Naranjo, Charlie Trujillo, Dolores McCoy, Levi Valdez, Larry Rodriguez, Lucas Cordova, Richard Ramsey, Steve Santisteven